

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 25, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1189

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TERESA GREENE-ASHLEY,

PETITIONER-APPELLANT,

V.

BRUCE GREENE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Richland County:
KENT C. HOUCK, Judge. *Reversed and cause remanded with directions.*

DYKMAN, P.J. Teresa Greene-Ashley appeals from an order denying her certain relief against Bruce Greene for failing to comply with the conditions of their divorce judgment. Because Bruce has failed to file a brief in this appeal, we summarily reverse and remand for proceedings consistent with this opinion.

Teresa filed a petition in the circuit court requesting that Bruce be found in contempt of court for failing to comply with their August 1, 1983 divorce judgment. Specifically, she claimed that Bruce had failed to report changes in his income and had failed to establish bank accounts for their three minor children, contrary to the terms of their divorce judgment.¹

At the contempt hearing, the trial court found Bruce in contempt of court for these failures. It ordered Bruce to pay \$564 per month in child support, establish a bank account for the one child who had not yet reached the age of eighteen, and pay attorney fees and costs for the contempt action.

The trial court did not give Teresa all of her requested relief, however. It concluded that § 767.32(1m) and (1r), STATS.,² prohibited it from

¹ The divorce judgment provides:

[Bruce] shall open three separate bank accounts in a local bank for the benefit of the minor children by August 15, 1983, with himself and [Teresa] as co-custodians of said accounts, with an opening deposit of \$25.00. Thereafter [Bruce] shall pay \$25.00 per month into each of the three accounts until such time as the balance of each account, including accrued interest, reaches a total of \$5,000.00. Then each \$5,000.00 balance shall be left in the account to continue to bear interest until such time as each child reaches the age of eighteen (18). Should the oldest child ... turn eighteen before the \$5,000.00 balance is reached, [Bruce] shall continue to pay into the account until the \$5,000.00 balance is reached.

² Section 767.32(1), STATS., allows the court to revise orders for child support and maintenance payments in certain circumstances. Section 767.32(1m) provides:

In an action under sub. (1) to revise a judgment or order with respect to child support, maintenance payments or family support payments, the court may not revise the amount of child support, maintenance payments or family support payments due, or an amount of arrearages in child support, maintenance payments or family support payments that has accrued, prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.

(continued)

ordering remedial payments that would compensate Teresa for Bruce's failure to report changes in his income. It also concluded that it had lost jurisdiction over the two children who had reached the age of eighteen and therefore was unable to order Bruce to make payments to them.

On appeal, Teresa claims that the trial court erred in its interpretation and application of § 767.32(1m) and (1r), STATS. She contends that this section does not preclude the trial court from ordering Bruce to pay her for damages caused by his contempt. Additionally, she claims that the trial court erred in not ordering Bruce to pay appropriate money damages to the children over eighteen years of age for his failure to establish their bank accounts.

Under RULE 809.83(2), STATS., the failure to comply with any of the requirements of the rules of appellate procedure, other than the timely filing of a notice of appeal or cross-appeal, is considered grounds for summary reversal. "We may summarily reverse a judgment or order if the respondent fails to file a brief, ... and we usually do. Failure to file a respondent's brief tacitly concedes that the trial court erred." *State v. R.R.R.*, 166 Wis.2d 306, 311, 479 N.W.2d 237, 239 (Ct. App. 1991). When the issue presented on appeal is one of "public concern," however, we will not summarily reverse, but instead will decide the issue without the help of the missing brief. See *Vogt v Nelson*, 69 Wis.2d 125, 127, 230 N.W.2d 123, 124 (1975).

Section § 767.32(1r) provides:

In an action under sub. (1) to revise a judgment or order with respect to child support or family support, the court may not grant credit to the payer against support due prior to the date on which the action is commenced for payments made by the payer on behalf of the child other than payments made to the clerk of court or support collection designee under s. 767.265 or 767.29 or as otherwise ordered by the court.

Teresa does not argue that this is a matter of public concern that we should address on the merits. We independently conclude that the issues presented are not sufficiently important to decide without the aid of a respondent's brief. We accept the unrefuted claims of the appellant because only she filed a brief.

Teresa requests that we remand so that the trial court can “order a money remedy to be paid to [her] in an amount that adequately compensates her for the injuries caused by [Bruce's] acts for the entire course of his contempt.” She also request that we remand the case for the trial court “to require [Bruce] to pay the two children over 18 the appropriate amounts to remedy the injury caused to each of them by their father's contemptuous acts.”³ We will do so.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.

³ Teresa also requested, in the alternative, that we determine the amounts that should be paid to her and the two adult children. Because we are not a fact-finding court, we must decline this request. See *Huehne v. Huehne*, 175 Wis.2d 33, 42, 498 N.W.2d 870, 873 (Ct. App. 1993).

